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Summary record of the 2425th meeting
Held at Headquarters, New York, on Monday, 12 March 2007, at 3 p.m.

Chairperson: Mr. Rivas Posada

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations

Third periodic report of Madagascar
(CCPR/C/MDG/2005/3; CCPR/C/MDG/Q/3 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Madagascar took places at the Committee table.*

2. **Ms. Ratsiharovala** (Madagascar), expressing regret for the long delay in the submission of the report (CCPR/C/MDG/2005/3), assured the Committee that Madagascar considered itself bound by the Covenant and stood ready to improve its implementation of it. In 2003, her Government had established a technical committee for the drafting of human rights reports, comprising public officials and members of non-governmental organizations and of civil society, and that had made it possible to update the country's reporting to the various human rights treaty bodies.

3. The delegation's replies to the Committee's list of issues (CCPR/C/MDG/Q/3) would deal with legal, legislative, institutional, judicial and political developments, and steps taken or planned by the Government to implement the Covenant. She informed the Committee that since the drafting of the report in 2004, a new Judiciary Statute had reformed the judicial system and Decree No. 2006-015 on the general organization of prison services had reformed the prison system. Madagascar had also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2005 as well as the two Optional Protocols to the Convention on the Rights of the Child. The Government had widely publicized manuals on the observance of human rights, including recommendations on the application of the Covenant, issued for the general public in the Malagasy language. Lastly, the draft revision of the Constitution that would be put to a referendum on 4 April 2007 would strengthen the provisions regarding the effectiveness of the human rights treaties to which Madagascar was a party. The delegation looked forward to a constructive dialogue with the Committee.

4. **The Chairperson** invited the delegation to address questions 1 through 12 on the list of issues (CCPR/C/MDG/Q/3).

5. **Mr. Rakotoniaina** (Madagascar), referring to question 1 on the list of issues, observed that article 8 of the Constitution met the requirements of the Covenant in granting equal protection under the law to all individuals in Madagascar, including the equal right of aliens to apply for redress of human rights violations. Aliens were on par with nationals except for the enjoyment of certain political rights pertaining exclusively to citizens. In answer to question 2, there had been only one court decision, compensating a woman who had been a victim of gender and age discrimination in employment, after the 2003 Supreme Court Order. Citizens were not familiar enough with their human rights, nor were public officials, but the Government was actively working to raise awareness, and since 2006 had been providing human rights training to judicial and law enforcement officials, which would eventually broaden the jurisprudence guaranteeing the implementation of the Covenant.

6. The Government intended to reactivate the National Commission for Human Rights (question 3) once it had fully assessed the results of its first term and revised its statute so that it could become operational on a better basis, at which point new members would be nominated.

7. In answer to question 4, he said that in 2001 the Government had indeed decreed a state of emergency, as allowed by the Constitution. States of emergency could apply to the nation as a whole or to parts of the territory, and any abuse of power could be appealed in a court of common law or an administrative court. Time limits afforded legal protections: a state of emergency could be proclaimed only after the issuance of a formal decree and was limited to 15 days in the case of national emergencies, or to three renewable months in the case of martial law.

8. He observed that statistical information regarding the involvement of women in the public and private sectors (question 5) had been provided in the supplementary written responses just circulated to the members (CCPR/C/MDG/Q/3/Add.1 [French only], paras. 21-27). The number of women in key posts nationally and internationally had been rising, a trend that was expected to continue. Table 1 gave figures on the participation of women in the economy; and further information was given on the Government's policy to achieve gender equality and the action it had taken to combat traditional customs that were contrary to the Covenant.

9. Regarding access to contraception (question 6), he said that maternal mortality from clandestine abortions or infectious diseases had declined and that the Government's current policy to increase the availability of contraception by the year 2012 should guarantee a further decline.

10. The crimes punishable by death under the new Criminal Code (question 7) included armed robbery, premeditated murder, arson, poisoning and anti-government plots. The Parliament at its last session had deferred passage of legislation acceding to the Second Optional Protocol to the Covenant, but since Madagascar had already abolished the death penalty, accession would not pose any problem.

11. The response to question 8 required some clarification. *Dina* (report, paras. 108-114) were traditional village rules interpreted and implemented by law-enforcement village bodies through a kind of customary law system that had evolved in parallel to the regular courts of the country. In the past, such traditional judicial bodies had in fact decreed summary executions of bandits in their region; however, all such extrajudicial executions had ceased after the conviction, in 1997, of a member of one of those bodies of assassination. Act No. 2001-004 sought to incorporate the *Dina* into the Malagasy legal system by requiring court approval of all traditional rules, which must conform to the law. Any *Dina*-based decisions were thereafter automatically enforceable and did not require court approval, but they could be appealed in the regular courts of the country. *Dina* normally covered only minor infractions, subject to the penalties standard in the country, and they were also applied in settling minor village disputes. In the past, some of the traditional judicial bodies had ordered capital punishment for certain offences that were usually punishable by a maximum of five years in the regular courts of the country, but such village judgements were no longer permissible under the new Criminal Code.

12. Further to question 9 on the allegations of reciprocal incidents of torture by supporters of both parties in the 2001 elections, the Government had reviewed and dismissed or prosecuted all complaints, and some victims had received reparation. Most of the complaints had come from supporters of the candidate who was now President. The absence of complaints did not, of course, mean that torture did not occur, but specific complaints of torture were very helpful to the authorities as they acted to eliminate the practice.

13. In answer to question 10, he said that Decree No. 59-121 (report, para. 129) had been abrogated by the new Decree No. 2006-015 on the general organization of the Malagasy prison services, which had eliminated convict labour. Convicts now were paid at almost the normal rate for any work they did. As to the protection of domestic workers, they had the same rights and social benefits as all others. The Government's plan for the future was to improve living standards in general throughout the country, and that would include domestic workers.

14. Parliament was poised to adopt the reform proposal to reduce the length of pretrial detention (question 11). The statutory maximum pretrial detention was set at 20 months: an initial period of 8 months followed by 2 six-month extensions. In preliminary judicial investigations a maximum of three months' detention was permitted. The new legislation would completely eliminate the issuance of orders for immediate arrest for the commission of a crime, with unlimited detention (written responses, para. 57).

15. As indicated in the written responses (paras. 69-71), the Government had already disposed of all cases of prisoners who had spent more than five years on remand, and was now working on the cases of those detained for over three years. It had set up expanded legal teams, meeting several times a year, to deal with detainees who had been held for long periods, with a special task force handling the 400 criminal cases awaiting trial. No inmate had been waiting since 1972 in Nosy Lava prison for his appeal to be heard, but there was one case of a prisoner waiting since 1978. The Government was remedying the error that had created that situation, made by volunteers unfamiliar with legal procedures, and no more such cases would occur in the future.

16. Responding to question 12, he said that arrests or detentions could be termed arbitrary only when they were not based on any penal law or due process or when the detainees were not given a reason for their arrest or detention. The arrests made during the period of the 2001 elections had all been fact-based: destruction, embezzlement, kidnapping, assault and battery, murder and crimes against the internal security of the State, some of which had been politically motivated. In fact, there had hardly been any problems between the rival factions before or during election, with only one incident reported in a private hotel after the results were announced. It was only after the

Constitutional Court ruling that all the voting records should be double-checked, and after the international community officially recognized the new regime, that problems had started occurring.

17. **The Chairperson** invited the Committee to pose questions to the delegation.

18. **Mr. Amor** asked whether the delegation could provide the draft text of the proposed new constitution that was to be put to a referendum on 4 April. While it was true that customary structures helped promote social cohesion, they were difficult to reconcile with the modern needs of the country, with its positive law and Constitution and its international commitments, including its human rights obligations. Although the delegation had explained that the *Dina* dealt mainly with less serious offences, it was not clear whether the decisions relating to them were based on customs or the laws and regulations in force. The social norms of the *Dina* sometimes collided with the State party's obligations under the Covenant, as in the case of the systematic elimination of twins in some villages of the south-east or the practice of polygamy. It was incumbent on the State to take measures to ensure compliance with the Covenant, regardless of the particular circumstances of customary practice.

19. He asked whether the International Bill of Human Rights, the African Charter on Human Rights and People's Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, had been incorporated into Madagascar's positive constitutional law after ratification. In particular, he wished to know whether the Government intended to integrate the provisions of the Covenant into its domestic laws.

20. He asked whether the primacy of international treaties over domestic laws, subject to reciprocity with the other party applied to organic laws as well. He wondered whether the Covenant had infra-organic and supra-ordinary value and whether the principle of reciprocity could apply to multilateral treaties, including those on human rights. He also enquired about procedures or mechanisms to ensure compliance with the provisions of the Covenant. How did the principle of reciprocity — which applied to the political and economic rights of foreigners in the case of bilateral treaties — he requested information on apply to the personal rights of foreigners as well? Was there any relevant jurisprudence of the Constitutional Court or other courts in that connection?

21. **Mr. O'Flaherty** asked how the Supreme Court had relied on the Covenant in the case of *Dugain v. Air Madagascar*, where it was cited. He also wished to know whether the delegation had any further information concerning the proposed joint programme with the United Nations Development Programme (UNDP) to raise professional and public awareness of the Covenant, especially among judges and the traditional judicial bodies that enforced the *Dina*. With regard to training, he requested information on the role of human rights education in schools and universities, and in the training of lawyers and judges. He asked whether the UNDP programme was sustainable and whether it addressed institutional needs for long-term human rights education.

22. Concerning question 3 on the National Commission for Human Rights, he noted that the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination had also expressed concerns about the Commission's demise and asked whether the delegation had a timetable for completion of the first phase of the Government's review and for the reinstatement of the Commission. He also wanted to know whether the Government was taking steps to bring the Commission into line with the highest international standards for human rights commissions and whether it was consulting with the Office of the High Commissioner for Human Rights to that end.

23. With regard to question 4 on the state of emergency, he sought further information about judicial oversight or any independent safeguards put in place to monitor Government action. Referring to reports from Malagasy NGOs about human trafficking in the country, he asked whether the Government had programmes in place to address the issue and whether it was cooperating with neighbouring countries to curb the problem. Finally, he asked whether the delegation could provide statistics about the prosecution of traffickers and actions taken to support victims.

24. **Mr. Glélé-Ahanhanzo**, while acknowledging the tremendous social pressures impeding gender equality, asked what the Government was doing to educate the public on such issues, particularly on the practice of the systematic rejection of twins. He would appreciate concrete examples of efforts to raise awareness in

regions where resistance to gender equality was prevalent and to educate the public on the provisions of the Covenant.

25. **Mr. Khälil**, referring to the issue of respect for the right to life, said he was pleased to see that the Government agreed with a study on the situation of women and children in Madagascar (CCPR/C/MDG/2005/3, para. 83), which indicated that there were still problems related to ignorance of or unfamiliarity with modern contraceptive methods. Regrettably, not much was being done to alleviate the situation of unwanted children and illegal abortions or to improve family planning. Although the delegation said that greater efforts were being made, he wanted to know what measures had been taken to curb the reprehensible practice of the systematic rejection of twins and to raise the awareness of traditional leaders about the issue. Finally, he asked whether the courts satisfied themselves that the *Dina* respected the minimum guarantees under article 14 of the Covenant and whether the State party was going to include a clear definition of torture in its draft law on the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

26. **Ms. Palm** drew attention to paragraphs 120 to 123 of the report on the prohibition of slavery, which noted the persistence of one form of slavery — the failure to pay a proper wage to certain workers — and which stated that the principal new forms of modern slavery were connected with low-paid or unpaid work, generally involving domestic workers and detainees. Noting with satisfaction the reorganization of the Malagasy penal administration (written responses, para. 48), she said that detainees nevertheless continued to be permitted to work outside prisons for private enterprises without proper wages. More information was needed on the kind of work performed by the detainees, whether it was compulsory, how the wages compared with normal wages for the same work and who received the wages, if any. She also noted with concern reports of children still employed as domestic workers in rural and urban areas. They worked without pay and under very harsh conditions, despite legislation prohibiting such child labour. She would like to know what the State was doing to enforce the relevant legislation and to protect children from that form of modern slavery.

27. **Mr. Lallah** said that too much time had elapsed since the submission of the previous report. He hoped that such a lengthy gap would not recur, as it did not allow for the Malagasy Government to benefit from the Committee's input. In the current report, for example, little reference was made to the previous recommendations of the Committee.

28. With respect to question 12, he was concerned at the treatment of the persons responsible for some of the events of 2001. It was important that there should be no perception of impunity among the general public in order to protect the rights guaranteed under article 25 of the Covenant. In Madagascar, the judiciary had not been perceived to be entirely independent from the Government. The purpose of question 12 was to ensure that all people were treated equally. He would like to know whether those responsible for the disorder in 2001 had been dealt with impartially regardless of their political position. It would be useful to know how many government supporters had been punished as compared to members of the opposition. Impunity and discrimination in the treatment of people were two of the greatest enemies of a democratic order.

29. As for article 4 of the Covenant, although the legal machinery was described at length in paragraphs 44 to 68 of the report, there was no mention of the actual state of emergency declared in 2001. Furthermore, the information provided in the supplementary written responses was lacking in detail. The Malagasy Constitution did not incorporate the provisions of article 4, and it was unclear whether the proposed amendments to the Constitution would have any bearing on it. Article 4 was essential, as the foregoing articles involved basic rights from which the executive branch could not derogate at any time.

30. He would also like to know whether the Malagasy Government had notified the Secretary-General and other States parties to the Covenant about the state of emergency. It was essential that such notification should be given. When derogations were made, as was the case in 2001, the Committee should know which rights had been affected, the extent of the derogation and the measures taken under the derogation.

31. Regarding the *Dina*, it should not be assumed that the Committee was aware of how they functioned. Clarification was needed on the procedures under that extralegal regime. The supplementary written responses themselves acknowledged that the *Dina* involved extrajudicial machinery. Clarification was

needed on the remedies available in the event that that machinery interfered with any right protected under the Covenant. He would appreciate further explanation of how draft *Dina*-based decisions were distinguished from actual binding decisions. He would like to know whether the authorities who approved draft *Dina*-based decisions took into consideration any of the rights protected under the Covenant. More details were needed on whether such decisions were subject to appeal, in accordance with article 14 of the Covenant, on the rights of the defendant, plaintiff and prosecuting authorities concerned and on the limitations of those rights and on whether the presumption of innocence applied.

32. Lastly, he would like to know, in the light of the perception that the judiciary was not independent, whether there was a code of conduct relating to the judiciary. Such a code was the only guarantee available to citizens faced with the power of the State or the power of the powerful.

33. **Ms. Chanet** said that she, too, regretted the lengthy gap between the submissions of the periodic reports. She noted that the existence of capital punishment for cattle theft was disproportionate and contrary to article 6 of the Covenant. Concerning question 12, she also expressed concern at reports of inconsistencies in the penalties applied in connection with the events of 2001, depending on the political stance of the accused. Although the proposed commission of inquiry, which might have helped to prevent such double standards, had not come into being, she would welcome hearing the delegation's views on it. Concerning the *Dina*, clarification was needed on how they operated and particularly how remedies could be pursued when a person was convicted under a *Dina*-based decision. There had been reports that, despite the new legislation mentioned in the report to regulate *Dina*-based decisions, extrajudicial executions continued to be carried out in the country, often by security forces.

34. With respect to torture, the report mentioned legislation aimed at enforcing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She would like to know whether that legislation provided for the suppression of torture as such or as an aggravating circumstance of certain crimes, as was currently the case under article 303 of the Penal Code.

35. Concerning the length of detention, she was perplexed by the Malagasy delegation's reply concerning the security of the person and the right not to be subjected to arbitrary detention. Paragraph 57 of the supplementary written responses stated that there was no limit on the length of detention after the issuance of an arrest warrant, which contradicted article 9 of the Covenant. Clarification was needed on the status of the draft legislation concerning time limits on police custody.

36. **Mr. Glélé-Ahanhanzo** enquired about the maximum length of pre-trial detention and the number of persons freed on bail in recent years. Further details were needed on the detainees who had spent more than five years on remand (CCPR/C/MDG/2005/3, paras. 205 and 206). Lastly, with respect to question 11, even if there was no inmate of Nosy Lava prison who had been waiting since 1972 for his appeal to be heard (written responses), there was one person who had been waiting since 1979, which was an excessively lengthy period. He therefore made an urgent appeal for the Malagasy Government to resolve the issue.

37. **Ms. Motoc**, noting with satisfaction the significant number of women in the delegation, asked what measures had been taken by Madagascar to educate rural populations about the Covenant. Information was needed on whether steps had been taken to inform traditional leaders about the provisions of the international instruments to which Madagascar was currently a party. She would also like to know what measures had been taken to punish breaches of Malagasy law, including against traditional leaders responsible for extrajudicial executions. Noting the Malagasy initiatives to combat corruption, she said that such efforts were necessary not only for the creation of an environment conducive to economic development, as was stated in the report, but also for the full protection of human rights. More details were needed on action taken by the anti-corruption bodies mentioned in the report. She would also appreciate further information on the specific steps taken to combat the upsurge of kidnappings in recent years and the networks mentioned in the report involving the kidnapping of mostly Indian and Pakistani nationals. She would welcome an update on the bill to abolish the death penalty. Lastly, she would like to know whether the Constitution recognized the existence of minorities.

38. **Mr. Iwasawa**, acknowledging the frank admission by the Malagasy delegation that there were

obstacles to the implementation of the Covenant, including the customs in rural areas, asked whether such customs affected human rights other than the right to equality between men and women and the right to life. He would welcome further information on the effectiveness of the measures taken to address customs which ran counter to the Covenant, as outlined in paragraph 28 of the supplementary written responses.

39. **Mr. Johnson** said that while the trade union rights were guaranteed in all areas under Malagasy law, in practice workers in the export processing zone found it difficult to organize unions or undertake collective negotiations. Only one company of the existing 62 in the zone had signed a collective bargaining agreement. There were also reports of abuses involving mandatory overtime, night work for women and sexual harassment. He would therefore appreciate further clarification on those matters.

40. *The meeting was suspended at 5.10 p.m. and resumed at 5.35 p.m.*

41. **Mr. Rakotoniaina** (Madagascar) explained that the Government of Madagascar, in cooperation with UNDP, had been undertaking awareness-raising programmes to try to eliminate the customs and usages that were in conflict with the Covenant and domestic law. As that was a long-term undertaking, it had been decided that the programme for the current year would consist of a dialogue at the commune or village level dealing in particular with the taboo on raising twins.

42. The programme would involve the customary leaders, local and State authorities, teachers and religious leaders, as well as the victims, namely the parents of twins. However, an added level of complication was that discussing the taboos was itself taboo. The intention was to overcome the taboo on twins in order to achieve a behavioural change at the grass-roots level, but there was no doubt that it was going to be difficult. Subsequently, the programme would be extended to other locations, and cover other issues. Designated contact persons in the various villages would attempt to convince their fellow-villagers of the need to abandon taboos and other negative customs. Finally, there would be an evaluation of the impact of the programme as a whole.

43. Turning to the question on reconciling the existence of a modern State with the simultaneous existence of customary jurisdictions which handed down extrajudicial decisions, he said that while the phenomenon had existed since time immemorial, the State was trying to eliminate it, in particular by prosecuting customary leaders who pronounced extrajudicial sentences. One particular customary leader had been sentenced in 1997, and since his prosecution, there had been no more extrajudicial sentences in his region.

44. The law providing for codification of the *Dina*, he explained, was intended to suppress the existence of traditional judicial bodies, which, in the past, had handed down decisions that were not in conformity with the law and disproportionate to the crime (and against which there was no appeal). The law authorized the drawing up of *Dina*, or rules that were applicable at village level but that must not interfere with positive law. In other words, there might be rules on minor village issues, but in future people would no longer be judged by traditional judicial bodies that were not recognized by the law. With regard to the status of decisions made under the *Dina* system, he explained that if one of the parties to the dispute was not satisfied with the outcome, the matter could be submitted to the court of appeal. Already, positive results were being seen: the press no longer carried reports of summary executions ordered by the customary courts.

45. Turning to the question of summary executions by law enforcement officers in the rural area, he clarified that police officers had fired their weapons only when their lives were being threatened by armed bandits. Thus the issue was whether or not legitimate self-defence was involved, in other words whether a policeman's life was truly in danger when he fired his weapon. The fact that a bandit was carrying a weapon was in and of itself a justification for armed response. Indeed, the Government had a long list of policemen who had hesitated to fire and been killed by bandits. These stories tended not to be covered in the press: only the opposite situation, of the bandits killed by the police, was reported. But police officers were human beings too and were equally entitled to the right to life. That did not mean that there were never errors of judgement; however, if a policeman fired his weapon when not in a situation of justified self-defence, he could be prosecuted and sentenced.

46. Turning to the question on selective justice during the election period, and assertions that sentences had been systematically passed with a view to inflicting harm on the supporters of one side, he said that it was necessary to understand the context at the

time. During those demonstrations huge crowds had set up barricades to prevent the delivery of food supplies to the capital, and soldiers had been sent to dismantle them. Bridges had been dynamited, fires had been set, and other violent offences had taken place. All those offences, however, had been committed only by one side, which had not complained of being attacked by the other side. Had there been such complaints, failure to act on them would have constituted selective justice, but that had not been the case.

47. **Mr. Andriamihanta** (Madagascar) said that since there had been many questions with regard to the concept of *Dina*, he would try to be as clear as possible to avoid misunderstanding. The concept of *Dina* was part of the culture and traditions of Madagascar, a way of regulating the life of society going back centuries. *Dina* should not really be described as a system of traditional judicial bodies; rather, it was a form of social organization, comprising collective rules that were freely adopted by a majority at the grass-roots level and were specific to each locality.

48. They were now codified in a form known as the "Standard Pattern *Dina*", as provided for by Act No. 2001-004. Under that law, *Dina* could not be contrary to the Constitution, and therefore by extension could not be contrary to the Covenant or, indeed, to national law. In terms of procedure, under the *Dina* system, the right of both sides to be heard was respected. The traditional judicial bodies that enforced the *Dina* should thus not be viewed as archaic or as flouting human rights. While there might well have been abuses in the past, particularly in the south-east of the country, customary leaders exceeding their authority under the law now suffered appropriate penalties.

49. **Ms. Rasoamananjara** (Madagascar) wished to provide clarification concerning the taboo on twins. Indeed, in one part of the country, the taboo had been part of usages and customs based on ignorance, fear and a lack of education. However, it was not correct that one twin in every set was killed; rather, one of them was abandoned. That situation had changed, however; many of the region's better educated men and women now chose to escape if twins were born to them and those who could not move could bring their twins to centres where they were looked after by associations until they could be adopted by people of goodwill. Thanks to changes in the law, the adoption of twins by foreigners was no longer regarded as trafficking.

50. The national gender and development action plan (PANAGED) was a part of the Madagascar Action Plan (MAP). The Economic Policy Framework Document (DCPE) for Madagascar, had been drawn up in 1995, and later superseded by the country's Poverty Reduction Strategy Paper (PRSP). That, in turn, had now been replaced by the Madagascar Action Plan.

51. **Ms. Mohajy** (Madagascar) referred to the question on whether international treaties took precedence over national law and whether the principle of reciprocity applied to multilateral treaties and international human rights instruments. Under the Malagasy Constitution, duly ratified treaties or agreements took precedence over national law. The issue of reciprocity arose only in the case of bilateral treaties.

52. The status of the charters listed in the preamble was an issue that gave rise to wide-ranging doctrinal debates, and Madagascar had adopted a pragmatic approach. By giving the charters a status higher than the law, the Constitution stipulated their incorporation into the positive laws of Madagascar. However, as there was no jurisprudence relating to those charters, a capacity-building seminar in that area would be useful.

The meeting rose at 6 p.m.